

# Improving Access to Care for Justice-Involved Persons with Behavioral Health Needs

Provided by the Correctional Behavioral Health Workgroup  
chartered by the North Dakota Department of Corrections  
and Rehabilitation

July 2016

## CHARTER

### TEAM

#### Correctional Behavioral Health Workgroup

### MISSION

The mission of the Correctional Behavioral Health Workgroup is to serve as a unified voice for correctional agencies in North Dakota in order to make recommendations to the 65<sup>th</sup> Legislative Assembly regarding the improvement of access to behavioral healthcare for individuals involved with the criminal justice system.

### SPONSOR

North Dakota Department of Corrections and Rehabilitation

### CURRENT SITUATION

Correctional agencies across the state recognize that there may be gaps in behavioral health services for individuals in contact with the criminal justice system. There are instances in which offenders are incarcerated because of these gaps and a use of community-based resources may be more cost-effective and produce more long-term positive effects. If gaps in behavioral health services can be addressed earlier in the process, with appropriate services and service coordination, it will provide the courts with additional sentencing options as well as reduce the “revolving door” of incarceration for offenders with behavioral health issues, thus improving outcomes and increasing public safety. It is the desire of the Correctional Behavioral Health Workgroup to develop a committee to provide a comprehensive report to the 65<sup>th</sup> Legislative Assembly (2017-2018) in order to identify these gaps and provide recommended solutions.

### BOUNDARIES

1. The committee shall be comprised of representatives who volunteer their time.
2. Committee members are only accountable to their respective agencies and the committee has no authority to mandate governing boards to any action.
3. The committee shall meet bi-monthly until completion.
4. Interactive television is authorized to assist members in participating in meetings.

### SCOPE

1. The scope includes adult offenders who are under correctional supervision in North Dakota who are in need of behavioral health services.

### DESIRED OUTCOME

#### ***A successful effort would result in:***

1. The committee will provide a written report describing up to 10 key service delivery gaps throughout the state for individuals in contact with the criminal justice system who are in need of behavioral health services.
2. The committee will provide a written report with 1-3 recommended solutions to each identified service delivery gap.
3. The committee will develop a method of sharing its findings with the key stakeholders and policy makers it identifies.
4. The committee will include any documented support from state and local leaders in the report.

5. The committee will define key terms in the report.
6. The committee will identify key policy makers and garner support from them for this effort.

## **UNDESIRED OUTCOME**

### ***A successful effort would not result in:***

1. *An inability to clearly define the problems or agree on proposed solutions.*
2. *Alienating key stakeholders or failing to effectively communicate our recommendations.*
3. *Underestimating the magnitude of the problem.*
4. *Failing to create solutions that are sustainable.*
5. *Further promotion of correctional systems as behavioral health providers.*
6. *Failure to consider the costs to the community beyond the financial implications.*

## **ESTIMATED DATE FOR COMPLETION**

Report completed by August 2016

Communication with stakeholders/policy makers completed by December 2016

## **MEETING FREQUENCY & DURATION**

Bi-monthly, four hours or as determined by the agenda.

## **MEMBERS**

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## **CHAIRPERSON**

Dr. Lisa Peterson

## **RECORD KEEPER**

Lori Wright, DOCR Transitional Planning Services

## **FACILITATOR**

Tom Erhardt

## INTRODUCTION

It is widely accepted that people with mental illness and substance use problems are overrepresented in jails and prisons as compared to prevalence rates in the general population. Across the United States, deinstitutionalization, along with a failure to develop easily accessible and effective outpatient alternatives for treatment, has led to correctional facilities housing the highest concentrations of people with mental health and substance abuse concerns in the country (Stephy, 2007). National data has shown that nearly 70% of adults entering jails and more than 50% in state prisons have a substance use disorder (Osher, et al., 2012). Additionally, the number of mentally ill inmates in America's jails and prisons is reported to have quadrupled between 2000 and 2006 (Human Rights Watch, 2006). Research suggests that up to 50% of jail and prison inmates may present with a mental health concern in addition to substance use disorders (James & Glaze, 2006). Prevalence estimates of severe and persistent mental illnesses among incarcerated adults range from 15 to 25 percent, as compared to five to eight percent in the general population (Various citations in Fontanarosa, Uhl, Oyesanmi, & Schoelles, 2013).

Data for North Dakota prison facilities in 2015 shows that over 70% of individuals entering prison have an active substance use disorder diagnosis. Beyond that, 41% of male inmates have a mental health diagnosis in addition to substance use disorders and around 6% meet criteria for a severe and persistent mental illness. About 50% of female inmates have a mental health diagnosis in addition to substance use disorders, with 14% diagnosed with a severe and persistent mental illness.

As the population of incarcerated individuals in North Dakota increases, so will the number of offenders with significant mental health needs who will require the services described above. As citizens of North Dakota, we must consider whether incarceration, a costly and often ineffective response, is the best approach. In fact, our communities may be better served through alternatives to incarceration for nonviolent offenders with mental illness. This workgroup was created by a group of criminal justice professionals concerned about how behavioral health services access issues and gaps influence the people we incarcerate and the work we do. The recommendations provided in this report are the result of discussions based on available data and our combined experience working to carry out our missions of ensuring public safety and providing opportunities for people involved with the criminal justice system to change. They are based on two key points:

- 1.) In order for criminal justice diversion or re-entry strategies to be effective, they must be supported by a full continuum of accessible behavioral healthcare.
- 2.) We must improve the capacity to effectively treat those who do have to go to jail or prison in order to reduce recidivism and contain the cost of the corrections system.

## RECOMMENDATIONS

### DIVERSION

Criminal laws can be seen as an attempt to prevent crime if the philosophy is that applying a consequence will deter people from engaging in a particular behavior. Recent trends in incarceration show that the threat of punishment is not necessarily an effective deterrent, particularly for individuals with significant behavioral health needs. North Dakota has seen approximately a 38 percent increase (212 new felonies) in felonies in statute since 1997, which results in more people being eligible for incarceration in prison as a consequence to their behavior. Some specific felony level offenses may result in the ineffective, costly, long-term incarceration of higher numbers of people with behavioral health concerns.

One specific example of this phenomenon is applying a felony level offense to the simple assault of medical personnel. Often times, it is individuals who are under the influence of substances or in the throes of a psychotic or manic episode who perpetrate such assaults. As a result, this law has the potential to drive people with significant behavioral health concerns into the criminal justice system. Because an individual in an acute behavioral health crisis is unlikely to be deterred by the threat of a felony, this is an ineffective attempt at preventing assaults on medical personnel. If the goal is to reduce violence against medical personnel, alternative strategies must be considered.

#### ***Proposed Solutions:***

- 1. Support training for emergency care workers in responding to individuals in behavioral health crisis and those who are under the influence of substances, as well as the safe and ethical use of restraints.***
- 2. Examine the criminal code to determine other felony level infractions that lead to criminal justice involvement for people with behavioral health needs to determine which could be reduced without significant impact on public safety.***

Improving access to behavioral health resources could result in the point of arrest becoming a point at which individuals can access necessary services, rather than the point at which they are placed in the criminal justice system. Currently, law enforcement personnel in many areas of North Dakota do not have training in the identification of individuals in behavioral health crisis. Additionally, hospital capacity issues result in deferring arrested individuals with serious acute behavioral health needs to the custody of jails in the triage process when evaluating for admission and continued stay. When mental health commitment assessments are needed, transporting people to the North Dakota State Hospital can be costly and time consuming.

At times, crisis mental health beds that might be available are filled by individuals who are not in crisis, but are participating in substance abuse treatment and live a distance away from the treatment site. These procedures, as well as a lack of access to detoxification and intoxication management facilities, leads to jails being de facto behavioral health treatment facilities. This is problematic because jails are not licensed for detoxification and intoxication management by the Department of Human Services Behavioral Health Division and most do not have adequate on-site behavioral health or medical staff to effectively assess and treat these concerns.

***Proposed Solutions:***

- 1. Support training for law enforcement in recognizing individuals in behavioral health crisis.***
- 2. Expand capacity for local professionals to assist in the provision of mental health commitment evaluations.***
- 3. Increase capacity for detoxification and intoxication management services.***
- 4. Provide supportive housing for individuals participating in substance abuse treatment in order to increase access to crisis mental health beds that already exist (example, sober living environments).***

Many groups and agencies have identified local access to effective substance abuse treatment services as a key behavioral health gap in North Dakota. It is important that a variety of levels of treatment be available and that providers utilize treatment models that are supported by research showing their effectiveness with the target population. Medication-assisted treatment is a best practice for individuals with opioid use disorders and scarcely available in our state. If people with substance use or other behavioral health needs had access to local treatment options as alternatives to incarceration, as well as someone to help them determine what services they need prior to trial, many may be successfully diverted from prison. To that end, this workgroup supports the development of pretrial services. It is important to note, though, that pre-trial services and other assessment and diversion strategies are unlikely to be effective in the absence of a fully developed behavioral health system of care.

***Proposed Solutions:***

- 1. Invest in local, community-based effective substance abuse treatment services including medication-assisted treatment options.***
- 2.. Support the development of a pretrial services division to offer assessment, referral for appropriate interventions based on criminogenic and other needs, and supervision to assist people in getting the treatment they need prior to adjudication.***
- 3. It is important to note that simply creating pretrial services will not necessarily lead to positive outcomes if pretrial services officers are unable to actually link their clients with appropriate services due to access or capacity issues. To that end, this workgroup supports funding the recommendations that result from the needs assessment being conducted by the Department of Human Services.***

**INCARCERATION**

The time people spend in jail, whether serving pre-trial detention or jail sentences, is vital in terms of providing referrals for services and access to intervention to assist them in desisting from crime. Most jails are presently ill-equipped to effectively link their residents to appropriate behavioral health resources. First, there are no consistent behavioral health screening processes in place. Next, incarcerated persons lose access to any health insurance benefits they may have had. Few county jails employ behavioral health specialist staff members.

***Proposed Solutions:***

- 1. Support behavioral health needs assessment in jails.***

## POST-SENTENCE AND RE-ENTRY

Sentencing is viewed as the criminal justice system's attempt to facilitate intervention and treatment in order to reduce the likelihood that the person will reoffend criminally and ultimately improve their quality of life. The criminal justice system, and in many ways our behavioral health services system, is structured to respond to chronic conditions such as substance abuse and serious mental illness with an acute care model. The person is referred for a "treatment episode" or a period of incarceration and little attention is paid to helping them maintain the gains they may have made in their initial treatment episode or while in prison over time. Additionally, 70% of North Dakota district judges who responded to a Council of State Governments survey stated that they have sentenced someone they did not believe posed a high risk to the community to prison in order to access treatment they could not access in another setting. This is an unfortunate misuse of a high level, costly resource that can actually have a negative effect on the behavioral health functioning of persons who are incarcerated and public safety.

### ***Proposed Solutions:***

- 1. Invest in more cost-effective, community-based resources from a chronic care model such as sober living environments, supported employment, peer support and a full continuum of behavioral health services as alternatives to incarceration and reintegration strategies.***
- 2. Invest in community-based residential substance abuse treatment services due to specific gaps in this area that are often presently filled by prison-based treatment.***
- 3. Improve access to effective, long-term aftercare programs that advance learning and application and adhere to a philosophy that supports recovery.***

## PROMISING DIRECTIONS

There are several projects currently underway that are consistent with the recommendations outlined above. For example, there is an effort in Grand Forks to move to a "housing first" model with the belief that once people have access to safe, sustainable housing, they are better equipped to manage some of their other challenges. There is also a new intoxication/detoxification center opening in Grand Forks during summer 2016. Numerous agencies have come together to support these initiatives.

The Burleigh County Jail and The Heartview Foundation have begun the Justice and Mental Health Collaboration. One of the key goals of the project is to bring comprehensive behavioral health assessment to county jail inmates. The combined Burleigh-Morton County Jail will employ a behavioral health staff member to further these aims.

The Correctional Behavioral Health Workgroup would like to thank those viewing this report for your interest and consideration of the recommendations described above. It is our hope that investing in these strategies will curb corrections spending and provide for safer communities, whose citizens enjoy a higher quality of life. We look forward to helping further the goals of developing a more accessible and comprehensive behavioral health system of care for all North Dakotans.

# **Improving Access to Care for Justice-Involved Persons with Behavioral Health Needs**

Dr. Lisa Peterson

Clinical Director, Department of Corrections and Rehabilitation

Pamela Sagness

Director, Behavioral Health Division Department of Human Services

Presented on behalf of the Correctional Behavioral Health Workgroup



# Correctional Behavioral Health Workgroup

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**Mission:** Provide recommendations regarding improved access to behavioral healthcare for individuals involved with the criminal justice system


## Membership

- ▶ Leann Bertsch, DOCR
- ▶ Dr. Lisa Peterson, DOCR
- ▶ Pamela Sagness, DHS
- ▶ Dr. Rosalie Etherington, DHS
- ▶ Andrew Frobig, Cass County Jail
- ▶ Lynette Tastad, Cass County Jail
- ▶ Doris Songer, SWMCCC
- ▶ Chad Jackson, Stutsman County Jail
- ▶ Bret Burkholder, Grand Forks County Jail
- ▶ Steve Hall, Burleigh County Jail
- ▶ Thomas Erhardt, DOCR
- ▶ John Gourde, DOCR



# Keys to Remember

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- A woman with dark hair, wearing a red and white striped shirt, is smiling and holding a large white sign. The sign contains a list of five items, each preceded by a blue right-pointing triangle. The background is white with faint dashed lines.
- ▶ Chronic Disease
  - ▶ Continuum of Care
  - ▶ Best Practice
  - ▶ Diversion & Re-Entry
  - ▶ Incarceration Services  
for behavioral health  
(Prison & Jail)



# CSG 2016

# Chronic Disease Management

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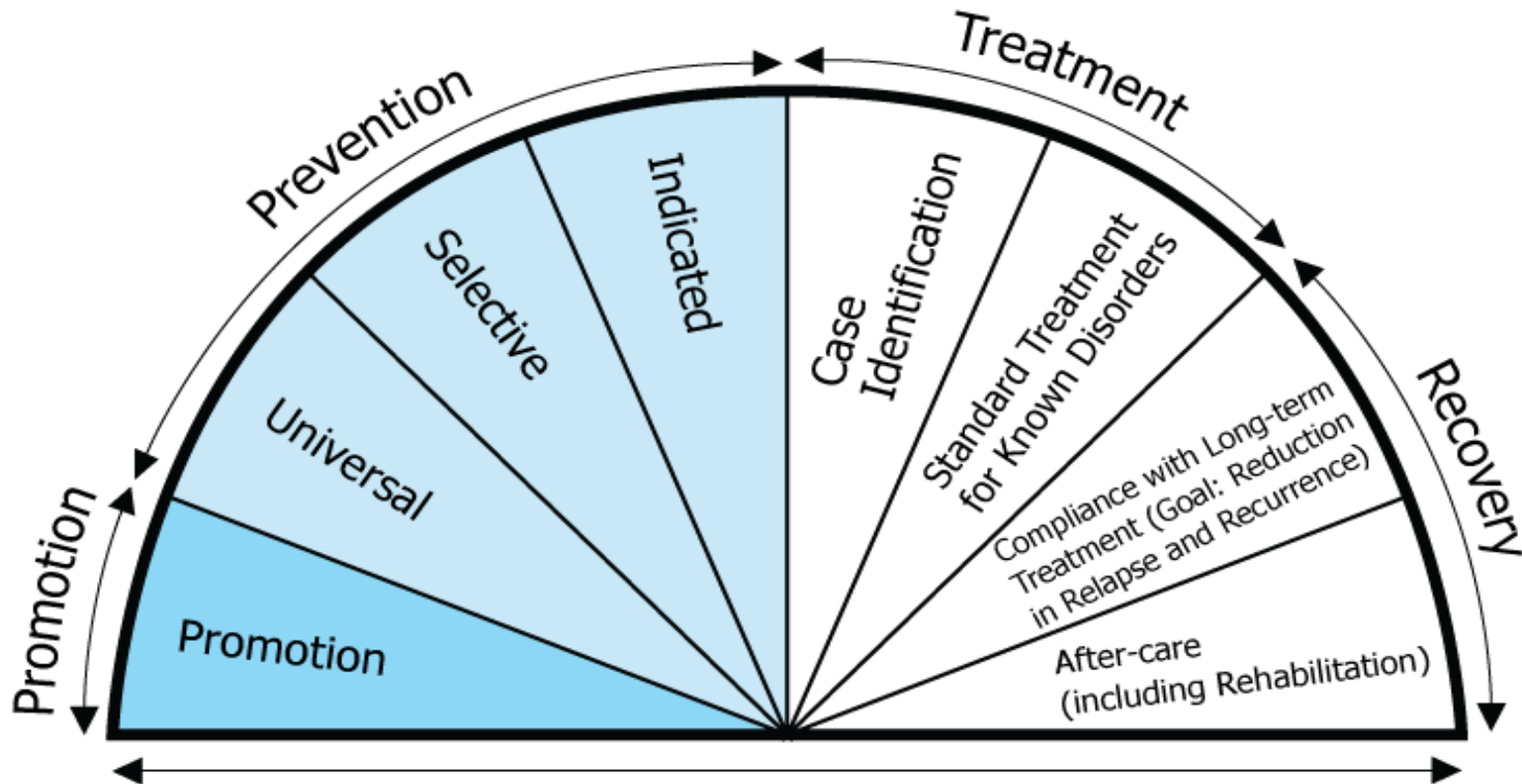
Chronic disease management is a broad term that encompasses **many different models for improving care for people with chronic disease.**

Elements of a structured chronic disease management program may include:

- a treatment plan with regular monitoring
- coordination of care between multiple providers and/or settings
- medication management
- evidence-based care
- measuring care quality and outcomes
- support for patient self-management through education or tools



# Behavioral Health Continuum of Care



Institute of Medicine Continuum of Care



# Best Practice

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A best practice is a method or technique that has **consistently shown results** in an effort to **maintain quality** and **produce outcomes**.



## Two key points:

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- ▶ In order for criminal justice diversion or re-entry strategies to be effective, they must be **supported by a full continuum** of accessible behavioral healthcare.
- ▶ We must **improve the capacity to effectively treat** those who do have to go to jail or prison in order to reduce recidivism and contain the cost of the corrections system.



# Phases to consider:

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- ▶ **Diversion or alternatives to incarceration**
  - ▶ Not talking about perpetrators of violent or serious crimes
- ▶ **Incarceration**
- ▶ **Re-entry**
  - ▶ Often violent and serious offenders have the most difficulty transitioning from jail or prison and very few people receive life sentences without the possibility of parole.



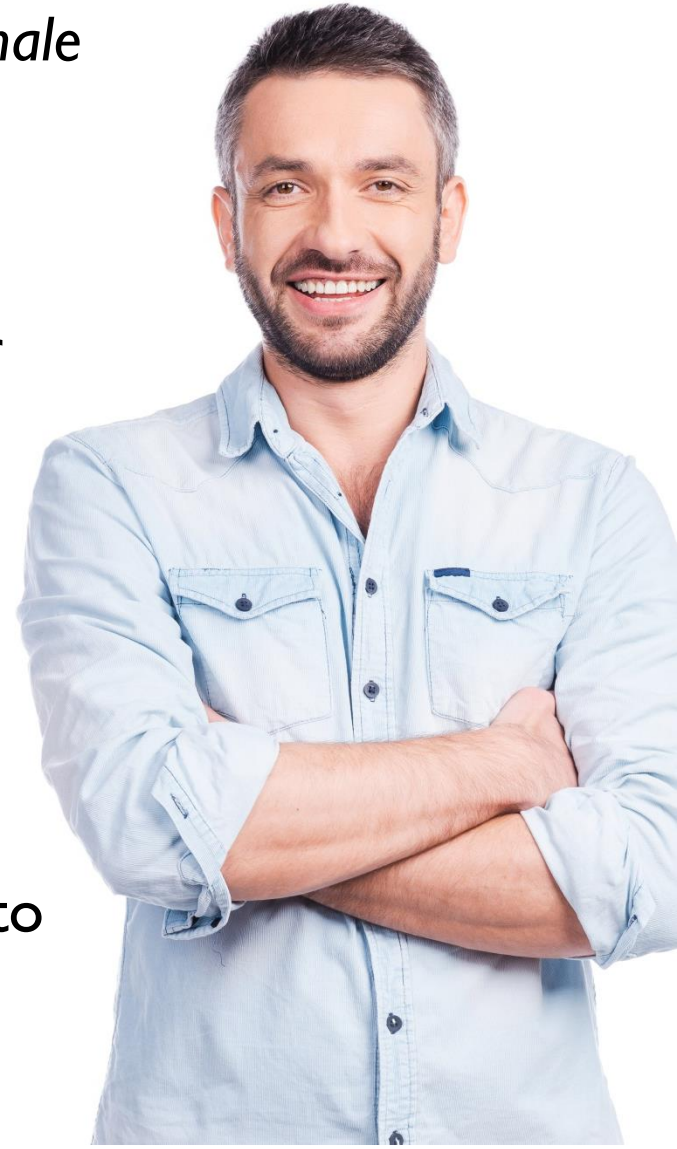


# We serve people.

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*35-year-old male*

- ▶ Non-violent criminal history
- ▶ Sentenced to probation for Possession of Marijuana Paraphernalia and Theft of Property
- ▶ Diagnosed with Bipolar I Disorder
- ▶ Revoked with new charges of Disorderly Conduct and Preventing Arrest and sent to prison



# We serve people.

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“We do not have any local options.”

“He was terminated from the crisis residential facility.”

“...there is no space available at present.”

“He agreed to have S picked up and jailed.”



# We serve people.

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“She was pretty sure he wouldn’t take his medications.”

“Hopefully he won’t get out of jail until stable.”

“Within five minutes of release from jail, PD had been called, S had made a scene...”



# We serve people.

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*32-year-old male*

- ▶ Felonies on record are for possession of drug paraphernalia and criminal trespass
  - ▶ On probation for possession of methamphetamine and possession of drug paraphernalia
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# We serve people.

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“It was obvious he was under the influence...”

“...was arrested for possession of methamphetamine and drug paraphernalia.”

“...to get medically cleared before transport to the jail.”

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# We serve people.

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“He is on a waiting list.”

“He has been evaluated and undergone treatment two times.”

“Reports the treatment was outpatient and lasted 90 days, which he completed.”

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# We serve people.

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*23-year-old female*

- ▶ Felonies are for Theft of Property and possession of various controlled substances and paraphernalia
- ▶ Revoked due to new drug and theft offenses and termination from treatment



# We serve people.

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Arrested for Possession of Drug  
Paraphernalia

“S was under the influence when at the office. Took S to see if S could get into a crisis bed. S did not meet the standards for crisis bed. Brought S back to office.”





# We serve people.

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She was given the opportunity to go to Centre, Inc. for treatment and did not show up.

Petition to Revoke two months after sentencing to probation on Possession of Drug Paraphernalia and Child Endangerment



# These cases are not anomalies.

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- ▶ On a given day, **27%** of ND prison beds are occupied by people who were revoked from supervised release.
- ▶ **76%** of revocations to prison were for technical violations.
- ▶ **62%** of new admissions to prison are from lowest felony class, mostly property and drug offenses.
- ▶ **70%** of judges surveyed stated they have sentenced individuals to prison in order to connect them with mental health or drug programming.
  - ▶ “Judges seemed more confident that substance use treatment is available than mental health treatment and that treatment was available in state prison.”-CSG Presentation



# Its not *just* about beds.

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Engagement

Prompt access

Housing-first  
models

Employment  
support

Long-term  
outpatient and  
maintenance  
treatment

Recovery-  
oriented care with  
peer support

***We cannot effectively address chronic conditions  
with acute care systems.***

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# Diversion

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- ▶ Determine the felony level offenses that lead to incarceration for high numbers of people with behavioral health needs.
- ▶ Determine which could be reduced without significant impact on public safety.

“Provide greater structure in statute regarding populations that should be sentenced to probation rather than incarceration.”

– CSG recommendation

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# Diversion

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- ▶ Support training for law enforcement in recognizing individuals in behavioral health crisis.
- ▶ Increase capacity for detoxification and intoxication management services.
- ▶ Provide supportive housing for people participating in substance abuse treatment to improve access to existing crisis mental health beds.
- ▶ Support the development of pre-trial services.
  - ▶ Fund the recommendations that result from the assessment conducted by DHS in order to increase services along the full continuum of care



# Diversion

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- ▶ Increase local capacity for mental health commitment evaluations.
- ▶ Invest in local, community-based, effective substance abuse treatment services.
  - ▶ There are specific gaps in residential treatment that are presently filled by prison treatment.
  - ▶ Limited medication-assisted treatment options

“There is no timely access to assessment and then they don’t meet commitment criteria because they are ‘safe’ in jail”. –Jail staff member

My day is 50% problem-solving with POs on what to do for addicts. Then the person picks up new charges and our hands get tied.” -P&P Program Manager



# Incarceration

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- ▶ Support behavioral health needs assessment in jails.
- ▶ Incarcerated persons lose access benefits.
- ▶ Incarceration disrupts established supports.
- ▶ Make better use of incarcerated time in jails and provide more effectively for transitions to the community.

“I often times hear community treatment providers say ‘the best form of treatment is jail’ when there is no assessment or treatment being provided in jail.” -Jail staff member





# Re-entry

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- ▶ Offering a full continuum of behavioral health services is key
- ▶ Chronic disease management
- ▶ Sober living, supported employment, peer support
- ▶ Improve access to effective, long-term aftercare programs that advance learning and application
  - ▶ With a philosophy that supports recovery





# Ongoing Initiatives

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- ▶ Housing first model in Grand Forks
- ▶ Intoxication/detoxification facility opening in Grand Forks
- ▶ Burleigh/Morton Justice and Mental Health Collaboration



## Two key points:

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- ▶ In order for criminal justice diversion or re-entry strategies to be effective, they must be **supported by a full continuum** of accessible behavioral healthcare.
- ▶ We must **improve the capacity to effectively treat** those who do have to go to jail or prison in order to reduce recidivism and contain the cost of the corrections system.



## Overview of Reentry in North Dakota

In 2015, 1,528 people - 1,233 men and 295 women, were released from incarceration at the North Dakota Department of Corrections and Rehabilitation (DOCR). At the end of 2015, 7,271 people were under the supervision of the DOCR living in the community.

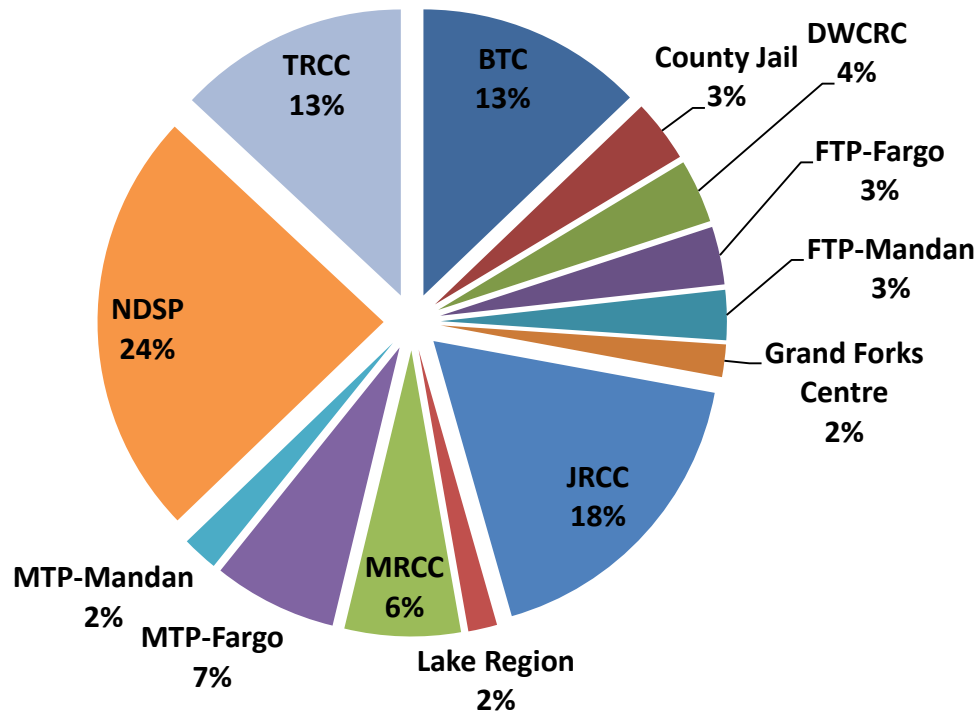
Returning to the community from incarceration is a complex transition for most people, as well as their families and their communities. Upon reentering society outside of prison, incarcerated people are likely to struggle with substance abuse, lack of adequate education and job skills, limited housing options, and mental health issues.

To get a snapshot of how people return to prison, data is collected to give us a better understanding of how people reenter the community. Here is a breakdown for 2015:

- 905 were released to parole (59%)
- 397 were released to probation (26%)
- 181 were released with no continued supervision (12%)
- 45 were released for some other reason (transfer to another jurisdiction, decease, escaped) (3%)
- 1,369 were released with a formal reentry service (continued supervision or from a Transitional Facility) (90%)
- 167 were released with the requirement to register as a sex offender, or an offender against children (11%)
- 20 were released with registration requirements with no correctional supervision to follow.

The chart below indicates the facility in which the person was housed at the time of release.

## 2015 Inmate Discharges by Facility



Indicates last housing unit of record while on inmate status.

NDSP-ND State Penitentiary, TRCC-Tompkins Rehabilitation and Correctional Center, BTC-Bismarck Transition Center, DWCRC-Dakota Women's Correctional and Rehabilitation Center, FTP-Female Transition Program, JRCC-James River Correctional Center, MRCC-Missouri River Correctional Center, MTP-Male Transition Program.

In 2012 951 people were discharged from prison in North Dakota to the community. Of those, 40% were returned to prison within 36 months of their release. This 40%, commonly referred to as the recidivism rate, can be further broken down to account for the return to prison due to committing a new offense (11.3%) and due to committing a violation of probation or parole (28.7%).

## DOCR Reentry Portfolio

The North Dakota DOCR recognizes the importance of this issue and its impact on public safety. In 2003 the department became involved in the National Institute of Corrections Transition from Prison to Community Initiative (TPCI). This initiative provided a structured process for the DOCR and public safety stakeholders to engage in collaborative efforts to remove barriers to successful reentry and apply research-based practices.

In 2008 DOCR Director Leann Bertsch reorganized the department and created the Transitional Planning Services (TPS) division, dedicated to focus on reentry. Directed by Patrick Bohn, the mission of TPS is to effectively plan, monitor and advance department's efforts to reduce individuals' risk of recidivism as they transition throughout our correctional system in order to ensure public safety and preserve the rights of victims.

In 2012 the DOCR embarked on an effort to implement treatment programs and correctional practices that research shows reduces recidivism. This effort resulted in the focus of correctional resources being reallocated to the highest risk people, and redesigning the treatment menu implementing cognitive-behavioral treatment. Staff at every level of the department were trained to communicate with people incarcerated and on supervision in a manner that enhances motivation to desist from criminal behavior.

Today, the department continues to evaluate and refine its practices in order to provide the most effective services to the citizens of North Dakota.

# Pretrial Diversion Programs

## *Research Summary*

*Prepared by:*

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October 25, 2010



**BJA**  
Bureau of Justice Assistance  
U.S. Department of Justice

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# Research Summary: Pretrial Diversion Programs

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## Abstract

Pretrial diversion programs are voluntary alternatives to traditional criminal justice processing. Research demonstrates that these programs can have positive outcomes for offenders with alcohol, substance abuse, mental health, or co-occurring disorders (NAPSA, 2010). Although researchers have assessed individual components of these programs, there has been little work to examine the effectiveness of pretrial diversion programs as a whole (NAPSA, 2010).

## Definition and Goals

“Pretrial diversion/intervention is a voluntary option which provides alternative criminal case processing for a defendant charged with a crime that ideally, upon successful completion of an individualized program plan, results in a dismissal of the charge(s).” (NAPSA, 2008, p. 6)

These alternative programs use established criteria to determine which defendants are eligible to participate in the program. For example, the New York City diversion program includes only first-time offenders with nonviolent misdemeanor offenses and inadequate employment. Diversion programs also are characterized by standardized supervision (e.g., drug testing) and service delivery, including counseling and drug treatment (NAPSA, 2010). The third shared characteristic of pretrial diversion programs is that completion of the program results in the dismissal of criminal charges (NAPSA, 2010).

The goal of these programs is to reduce crime by discovering the underlying factors that lead to an individual’s criminal behavior (NAPSA, 2010). Because these types of programs typically target nonviolent offenders, they aim to eliminate underlying factors such as mental illness or substance abuse that may drive an individual’s criminal behavior. Thus, many of these programs target offenders who are better served through community restitution programs rather than criminal sanctions

(NAPSA, 2010). By targeting the underlying root causes of criminal activity, pretrial diversion programs ultimately aim to reduce offenders’ recidivism (Ulrich, 2002).

Eligibility requirements for pretrial diversion programs can differ depending on the jurisdiction in which they are run, but most have at least one requirement centered on the following: (a) prior criminal history, (b) current charge, (c) substance abuse history, (d) mental health history, (e) victim approval, (f) restitution repayment, and (g) arresting officer approval (NAPSA, 2009).

A study of nationwide pretrial diversion programs found that most offenders in them had been charged with nonviolent felony offenses (Ulrich, 2002). The most common types of these offenses were fraud, larceny/theft (Ulrich, 2002), and drug-related offenses (Zlatic, Wilkerson, and McAllister, 2010).

The most recent major review of pretrial diversion programs was completed in 1982 for the Pretrial Services Resource Center (see Kirby and Pryor, 1982). More recent studies have examined the effectiveness of some components of diversion programs, others have examined different types of diversion programs, but none have examined the effectiveness of diversion programs as a whole (NAPSA, 2010; Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004; Mire, Forsyth, and Hanser, 2007). Additionally, the more recent review of pretrial diversion programs by NAPSA (2009) was offered to “re-introduce” pretrial diversion to the broader [criminal justice] field” (NAPSA, 2009, p. 5).

## Components of Diversion Programs

Pretrial diversion programs have several components. Most use risk assessments to determine whether offenders are eligible for the program, while others use standardized eligibility criteria such that an offender and his or her charge must fit certain requirements (NAPSA, 2010). Many also use assessments to



determine the needs of offenders and appropriate treatment/service plans.

Most pretrial diversion programs also include some type of supervision that accompanies treatment services (NAPSA, 2010).

Additionally, most require some sort of victim restitution, community service, and counseling. Depending on an offender's needs, programs also may include drug treatment or counseling, urinalysis, and programming for several types of traffic offenses.

### Types of Diversion Programs

There are several types of pretrial diversion programs. These include statewide diversion programs, prebooking programs, postbooking programs, and post-plea programs (NAPSA, 2010; Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004; Mire, Forsyth, and Hanser, 2007). These programs are very similar, but each has different requirements.

1. *Statewide Pretrial Diversion Programs*—These programs are managed and funded by the state's Administrative Office of the Courts, the state probation department, community corrections agencies, or nonprofit organizations (NAPSA, 2010). Many have community service or victim restitution components. Interestingly, most statewide pretrial diversion programs are not available in all of a state's jurisdictions (NAPSA, 2010). In Kentucky, for example, these programs are available in only 43 of the 120 counties (Kentucky Department of Public Advocacy, 2009).
2. *Prebooking Diversion Programs*—These programs intervene in the criminal justice process before an offender is charged with a crime (Lattimore et al., 2003). Thus, they keep offenders out of jail altogether (Cowell, Broner, and Dupont, 2004). They usually are aimed at offenders with a serious mental illness or those with co-occurring disorders (Lattimore et al., 2003). In jurisdictions with prebooking programs, criminal justice personnel are taught to recognize the symptoms of serious mental illnesses. Personnel are then able to
- identify whether these symptoms are present in the offenders they encounter in the field. When an offender is identified with symptoms of a serious mental illness, criminal justice personnel are able to divert that individual to a treatment center rather than booking him or her, which terminates that individual's involvement with the criminal justice system (Mire, Forsyth, and Hanser, 2007).
- Prebooking diversion programs may be the most beneficial type of pretrial diversion programs, but there are some barriers to their implementation. First, a jurisdiction's criminal justice personnel need to be highly trained. And jurisdictions that implement these programs have a greater liability. If frontline officers misdiagnose an offender and this leads to an injury, the officers' department may be open to a lawsuit (Mire, Forsyth, and Hanser, 2007).
3. *Postbooking Diversion Programs*—These are the most prevalent type of pretrial diversion program (Cowell, Broner, and Dupont, 2004). Like prebooking diversion programs, postbooking programs also are aimed at diverting offenders with mental illness or co-occurring disorders from the criminal justice system (Lattimore et al., 2003). These programs involve assessment and screening of offenders after they have been charged with an offense and typically require negotiations between diversion staff and criminal justice personnel. Postbooking programs develop treatment plans for offenders and allow offenders' charges to be waived after completion of the diversion program. Diversion staff typically work in courts and serve as case managers or monitors, and they help bridge the gap from the courts to community service providers (Lattimore et al., 2003).
4. *Post-Plea Diversion Programs*—Offenders taking part in post-plea diversion programs must plead guilty to the pending charges and participate in community-based supervision, treatment, or service programs (NAPSA, 2010). Once all aspects of the

program are completed, the defendant's charges and plea are thrown out or dismissed.

That there are several types of pretrial diversion programs demonstrates that different offenders may benefit from different programs or different components of programs. Each of the programs discussed above aims to divert offenders suffering from mental illness, alcohol and drug abuse, or co-occurring disorders from the traditional criminal justice system to treatment centers. Additionally, these programs aim to eliminate the factors that lead to an offender's criminal behavior.

Offenders who participate in pretrial diversion programs demonstrate positive outcomes when compared with eligible offenders who go through the traditional criminal justice system. Specifically, one study, by Broner, Mayrl, and Landsberg (2005), has demonstrated that offenders in pretrial diversion programs are more likely to be in the community than in jail or treatment centers 12 months after their initial crime. These researchers also found that offenders in these programs spent less time in prison than did eligible offenders who did not participate in a pretrial diversion program. Compared with traditional criminal justice procedures, diversion programs also lead to positive mental health, substance abuse, and treatment outcomes for offenders (Broner, Mayrl, and Landsberg, 2005).

Other research has found that the most positive outcomes occur when the offender is well matched with a mental health provider who has a good understanding of the offender's needs. The benefits also are maximized when an offender's caseworker has a small caseload and is able to be actively involved in the client's progress (Mire, Forsyth, and Hanser, 2007).

### **Other Benefits of Pretrial Diversion Programs**

In addition to the above-mentioned benefits, there are benefits to the criminal justice system as a whole and to the jurisdictions that implement pretrial diversion programs. These programs are both cost- and time-effective for

the criminal justice system (Cowell, Broner, and Dupont, 2004; Tanner, Wyatt, and Yearwood, 2008). They have been shown to reduce criminal justice costs in most jurisdictions (Cowell, Broner, and Dupont, 2004).

Pretrial diversion programs have been shown to be time-effective because they keep court dockets from becoming too large by diverting offenders away from traditional criminal justice processing, thus improving processing. They also reduce overcrowding in prisons (Tanner, Wyatt, and Yearwood, 2008).

Without pretrial diversion programs, prison and jail populations would almost certainly be larger. Finally, these programs benefit society as a whole. By being diverted away from traditional criminal justice processing, offenders avoid criminal convictions and sentences and are better able to obtain gainful employment (Zlatic, Wilkerson, and McAllister, 2010). This allows individuals participating in pretrial diversion programs to become productive members of society.

### **Unanswered Questions About Pretrial Diversion Programs**

There still are unanswered questions about pretrial diversion programs and their overall effect on offenders and the criminal justice system. Despite the fact that they aim to reduce offenders' criminal behavior, relatively few of these programs collect data on offenders' rates of recidivism (NAPSA, 2009; Ulrich, 2002). This is an opportunity for future research.

Researchers also have suggested that future studies examine the impact of using diversion programs with offenders diagnosed with a mental health or co-occurring disorder. There is evidence that an offender's openness to treatment can affect his or her experience in a pretrial diversion program as well as success after the program ends (Mire, Forsyth, and Hanser, 2007). More specifically, researchers should work to validate an assessment of offenders' openness to treatment, develop a valid way to match offenders and treatment

providers, and develop a valid assessment of the quality of services provided in pretrial diversion programs. Developing valid assessments and examining the point of diagnosis will allow researchers to determine the effects of these decisions and services on participant outcomes and the effect of pretrial diversion programs on the criminal justice system.

### Summary

Pretrial diversion programs divert offenders away from traditional court trials and sentencing procedures. Diversion programs operate on the principle that diverting offenders away from court trials and sentencing allows staff to uncover and address the root causes of a defendant's criminal behavior, which makes it less likely that he or she will reoffend in the future (NAPSA, 2010).

There are many ways to implement pretrial diversion programs (e.g., Lattimore et al., 2003; Cowell, Broner, and Dupont, 2004), but there is consistent evidence (e.g., Broner, Mayrl, and Landsberg, 2005; Mire, Forsyth, and Hanser, 2007) that diversion programs result in positive outcomes for program participants.

Despite these positive findings there still are gaps in the literature on the effects of pretrial diversion programs. These programs aim to reduce offenders' criminal behavior, but research has yet to empirically examine the success of this goal (Ulrich, 2002). To address this information gap, future research would need to randomly assign defendants to participate in the program and then compare their recidivism rates with those of offenders randomly selected to remain in the traditional criminal justice system. Similarly, research should examine the effect of pretrial diversion programs as a whole on offender outcomes, as opposed to the effect of individual components of these programs. Researchers may discover that pretrial diversion programs as a whole are more effective than any one component by itself.

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